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09/684,658	10/10/2000	Hugh G. Loebner		4106

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EXAMINER

GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 04/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 12

Application Number: 09/684,658  
Filing Date: October 10, 2000  
Appellant(s): LOEBNER, HUGH G.

**MAILED**

APR 04 2003

Hugh Loebner G.  
For Appellant

**GROUP 3600**

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/21/02.

A statement identifying the real party in interest is contained in the brief.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

**(3) Status of Claims**

This appeal involves claim 1.

Claims 2-4 have been canceled.

Claims 5-7 have been amended subsequent to the final rejection. Accordingly, the rejections of these claims under 35 U.S.C 112 have been withdrawn.

**(4) Status of Amendments After Final**

In view of the examiner's reconsideration of the amendment after final rejection, the appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 1/28/03 has been entered.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

There is only one claim in issue.

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**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

EP-375,580	Heitzmann	06-1990
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6,349,503	Gompertz et al.	02-2002
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**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heitzmann, European patent, EP-375,580, in view of Gompertz et al., 6,349,503, as set forth in the final office action mailed April 25, 2002.

The examiner's rejection is based on the following findings:

1. Heitzmann discloses an extendible tape crowd control stanchion 1 (Fig. 1).
2. The Heitzmann stanchion comprises a base A (see marked-up copy attached).
3. The Heitzmann stanchion comprises a post 2.
4. The Heitzmann post 2 is attached to the base A.
5. The Heitzmann stanchion includes a fixed top block assembly 3.
6. The Heitzmann fixed top block assembly 3 is attached to the post 2.
7. The Heitzmann fixed top block assembly 3 comprises a plurality of rollers 10.
8. The Heitzmann stanchion further comprises a movable bottom block assembly 12.
9. The Heitzmann movable bottom block assembly 12 is contained within the post 2.
10. The Heitzmann bottom block assembly 12 comprises a roller 14 and a weight 13.

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11. The Heitzmann stanchion further comprises an extendible and retractable guidance tape **4**.

12. The Heitzmann guidance tape **4** is laced between the fixed top block assembly **3** and the movable bottom block assembly **12** (Fig. 1).

13. The Heitzmann guidance tape **4** comprises a tape **4** and means **5** for attaching the tape **4**.

14. Gompertz et al. disclose a similar extendible guidance tape crowd control stanchion (Fig. 4).

15. The Gompertz et al. stanchion comprises a bottom block assembly **A1** (see marked-up copy attached).

16. The Gompertz et al. bottom block assembly **A1** comprises a plurality of rollers **54**.

17. Gompertz et al. discloses the equivalence of the use of an extensible chain or an extensible tape (column 3, line 58 and column 4, line 41).

18. The Gompertz et al. plurality of rollers efficiently doubles or quadruples the length of chain (tape, column 6 lines 2-4).

Heitzmann discloses all of the elements of the claimed invention as set forth in findings 1-13 except for the use of a plurality of rollers on the bottom block assembly. Gompertz et al. teach the use of a plurality of rollers on the bottom block assembly of an extendible tape crowd control stanchion in order to double or quadruple the amount of tape as set forth in findings 14-18. In view of these findings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the

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stanchion disclosed by Heitzmann to include a plurality of rollers as taught by Gompertz et al.

**(11) Response to Argument**

Applicant has argued that Gompertz et al. fails to "suggest that their system will work with other types of systems, and specifically those using gravity means. There is no requirement that Gompertz et al. specifically state that its pulley mechanism can be used with a gravity means. The question is what the applied references, taken as a whole, would suggest to one of ordinary skill in the art. Gompertz et al. teaches an improved pulley system that can be attached to a resistance mechanism (in this case an hydraulic cylinder) to increase the amount of barrier material (tape) that can be stored in and released from the post. The European patent discloses the use of pulley mechanisms with gravity resistance means. Taken together these references would suggest to one of ordinary skill in the art that if he wanted to increase the amount of tape that can be stored in and released from the post of a barrier system that uses a gravity resistance means such as that disclosed by the European patent, he could modify that system to use the improved pulley system taught by Gompertz et al.

Applicant has further argued that Gompertz et al. is not analogous art. With respect to the determination of what constitutes analogous art, MPEP § 2141.01(a) states in relevant part:

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); and *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993).

In the instant application, the Gompertz et al. reference qualifies as analogous art under both prongs of the test set forth above. First, both the instant application and Gompertz et al. are directed to a barrier fence system, the Gompertz et al. reference is within the field of applicant's endeavor. Second, both the instant application and Gompertz et al. are concerned with the problem of storing and releasing the tape of the barrier system, thus the Gompertz et al. reference is very pertinent to the particular problem with which

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the applicant's invention is concerned. Based on these facts, Gompertz et al. is analogous art that can be relied upon in making a rejection under 35 U.S.C. § 103.

Finally, applicant argues the position of the hydraulic cylinder in the Gompertz et al. reference. This argument is inapposite. The Gompertz et al. reference is not being relied upon for any teaching with respect to a hydraulic cylinder resistance mechanism.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ernesto Garcia  
Examiner  
Art Unit 3679

Attachments: one marked-up copy of Heiztmann, EP-375,580; and,  
one marked-up copy of Gompertz et al., 6,349,503

EG  
April 3, 2003

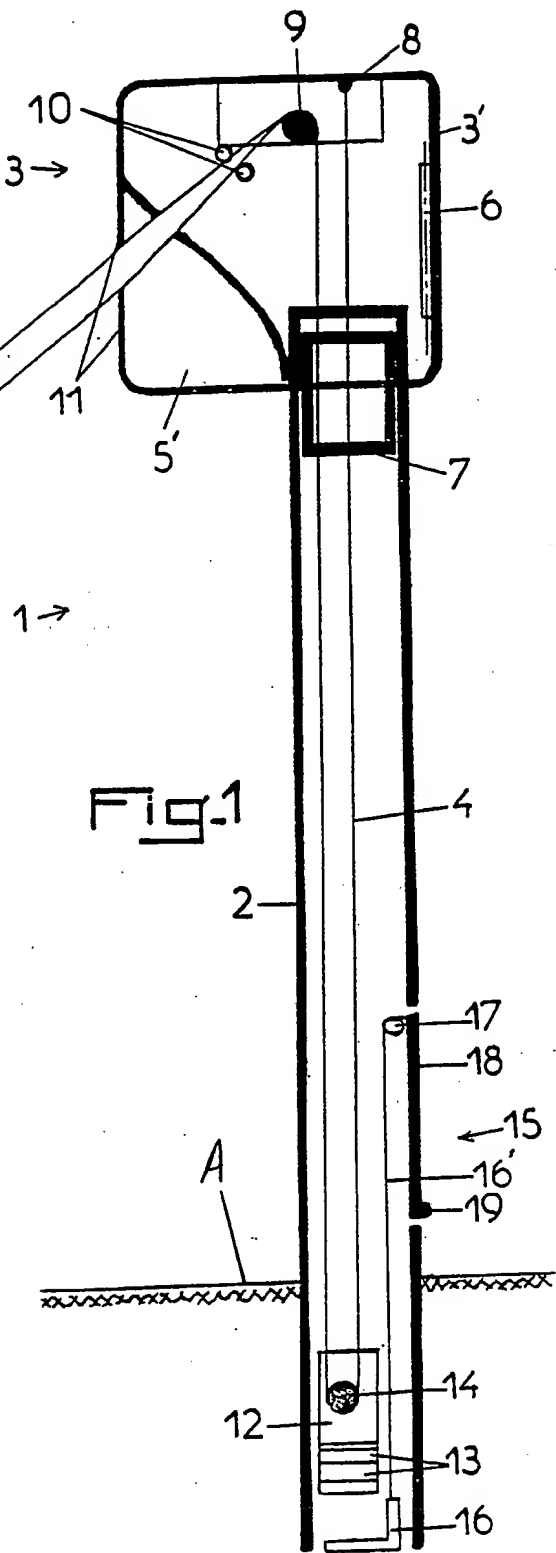
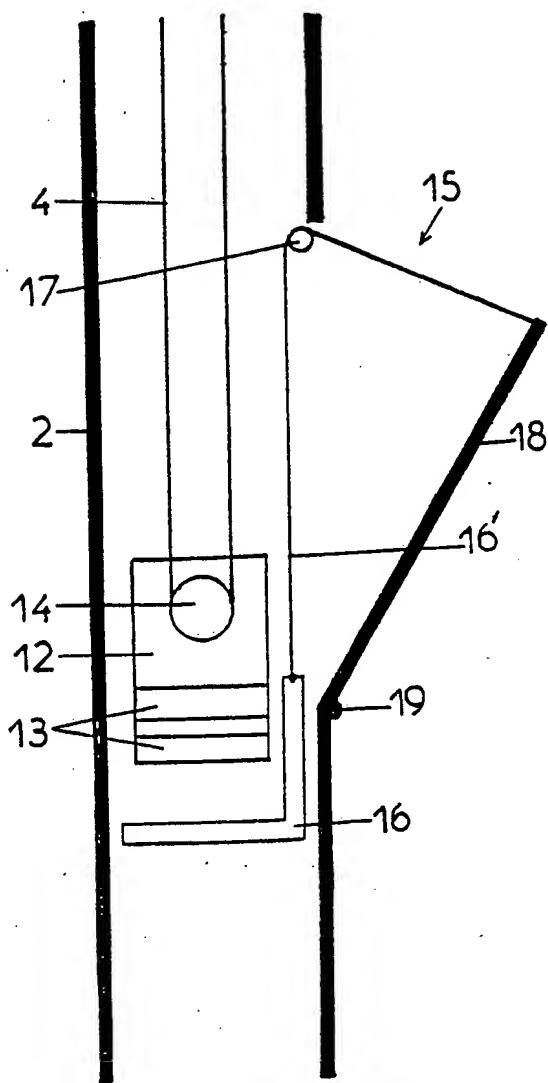
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Fig. 2



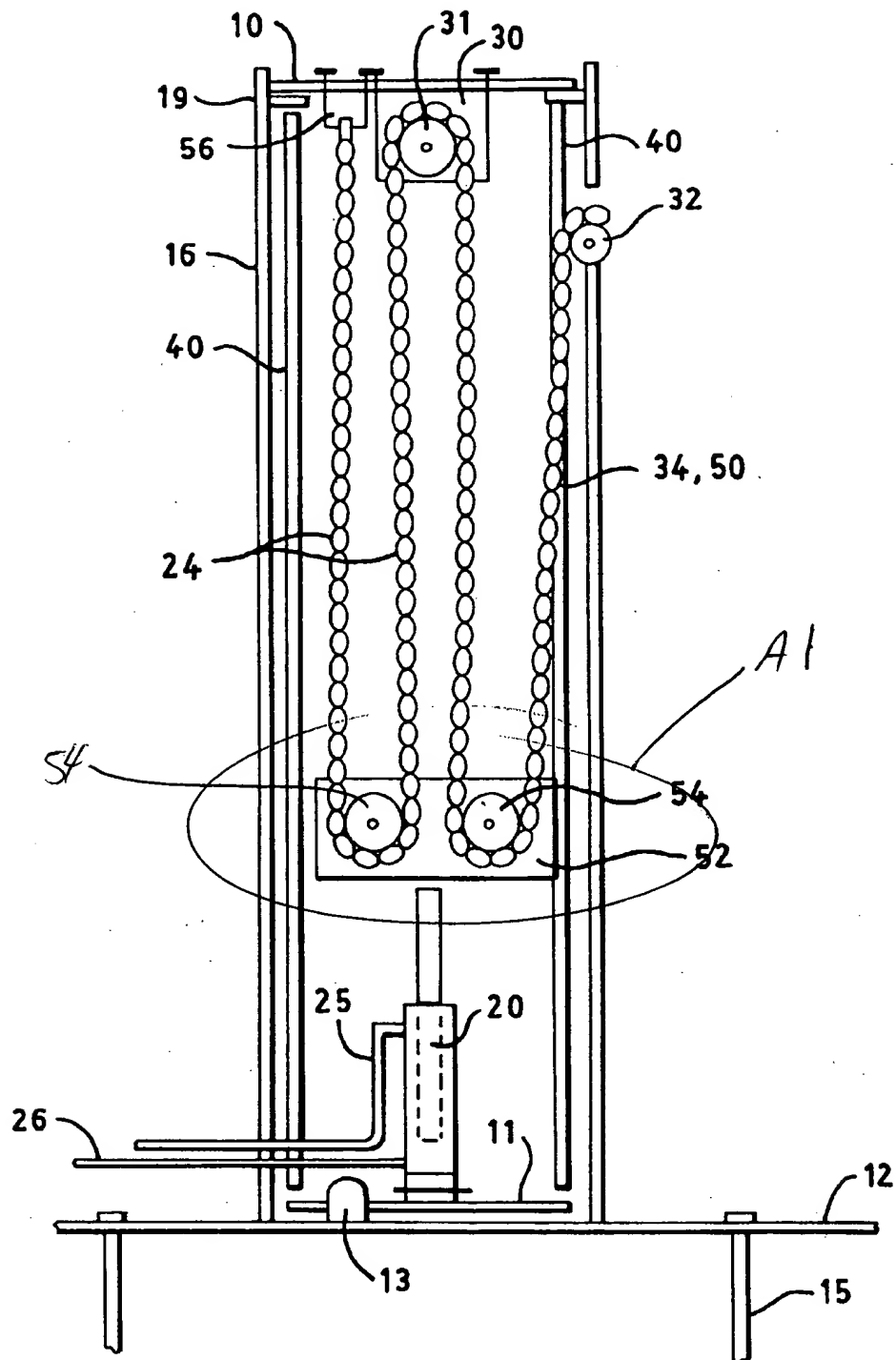


FIG. 4